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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

29 ENVIRONMENTAL RESEARCH CENTER,  
30 INC., a non-profit California corporation,

31 Plaintiff,

32 vs.

33 HEALTH WARRIOR, INC., a Delaware  
34 corporation,

35 Defendant.

**CASE NO. RG18905593**

**ASSIGNED FOR ALL PURPOSES  
TO JUDGE BRAD SELIGMAN  
DEPARTMENT 23**

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 21, 2018

Trial Date: September 16, 2019

**1. INTRODUCTION**

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1 a number of products manufactured, distributed, or sold by HEALTH WARRIOR contain lead,  
2 a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
3 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
4 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
5 Products”) are:

- 6 • **Health Warrior Superfood Protein Bar Dark Chocolate Coconut Sea Salt**
- 7 • **Health Warrior Chia Bar Superfood Banana Nut**
- 8 • **Health Warrior Chia Bar Superfood Dark Chocolate Cherry**

9 **1.2** ERC and HEALTH WARRIOR are hereinafter referred to individually as a  
10 “Party” or collectively as the “Parties.”

11 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
12 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
14 and encouraging corporate responsibility.

15 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a  
16 business entity each of which has employed ten or more persons at all times relevant to this action,  
17 and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.  
18 HEALTH WARRIOR manufactures, distributes, and/or sells the Covered Products.

19 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
20 dated March 9, 2018 that was served on the California Attorney General, other public  
21 enforcers, and HEALTH WARRIOR (“Notice”). A true and correct copy of the 60-Day Notice  
22 dated March 9, 2018 is attached hereto as **Exhibit A** and incorporated herein by reference.  
23 More than 60 days have passed since the Notice was served on the Attorney General, public  
24 enforcers and HEALTH WARRIOR, and no designated governmental entity has filed a  
25 complaint against HEALTH WARRIOR with regard to the Covered Products or the alleged  
26 violations.

27 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes  
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1 persons in California to lead without first providing clear and reasonable warnings in violation  
2 of California Health and Safety Code section 25249.6. HEALTH WARRIOR denies all  
3 material allegations contained in the Notice and Complaint.

4       **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
5 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
6 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
7 be construed as an admission by any of the Parties or by any of their respective officers,  
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
9 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
10 violation of law.

11       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
13 current or future legal proceeding unrelated to these proceedings.

14       **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered as  
15 a Judgment by this Court.

## 16       **2.     JURISDICTION AND VENUE**

17       For purposes of this Consent Judgment and any further court action that may become  
18 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
19 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
20 over HEALTH WARRIOR as to the acts alleged in the Complaint, that venue is proper in  
21 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
22 final resolution of all claims up through and including the Effective Date which were or could  
23 have been asserted in this action based on the facts alleged in the Notice and Complaint.

## 24       **3.     INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

25       **3.1**     Beginning on the Effective Date, HEALTH WARRIOR shall be permanently  
26 enjoined from manufacturing for sale in the State of California, "Distributing into the State of  
27 California," or directly selling in the State of California, any Covered Products which expose a  
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1 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it  
2 meets the warning requirements under Section 3.2.

3           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
4 of California” shall mean to directly ship a Covered Product into California for sale in  
5 California or to sell a Covered Product to a distributor that HEALTH WARRIOR knows or has  
6 reason to know will sell the Covered Product in California.

7           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
8 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
9 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
10 product (using the largest serving size appearing on the product label), multiplied by servings  
11 of the product per day (using the largest number of recommended daily servings appearing on  
12 the label), which equals micrograms of lead exposure per day. If the label contains no  
13 recommended daily servings, then the number of recommended daily servings shall be one.

14           **3.2 Clear and Reasonable Warnings**

15           Subject to Section 3.1, where HEALTH WARRIOR is required to provide a warning, the  
16 following warning must be utilized (“Warning”):

17           **WARNING:** Consuming this product can expose you to chemicals including lead which  
18 is known to the State of California to cause [cancer and] birth defects or other  
reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

19           HEALTH WARRIOR shall use the phrase “cancer and” in the Warning if HEALTH  
20 WARRIOR has reason to believe that the the “Daily Lead Exposure Level” is greater than 15  
21 micrograms of lead as determined pursuant to the quality control methodology set forth in Section  
22 3.4 or if HEALTH WARRIOR has reason to believe that another Proposition 65 chemical is  
23 present which may require a cancer warning.

24           The Warning shall be securely affixed to or printed upon the container or label of each  
25 Covered Product. If the Warning is provided on the label, it must be set off from other  
26 surrounding information and enclosed in a box. In addition, for any Covered Product sold over  
27 the internet, the Warning shall appear on the product display page or checkout page when a  
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1 California delivery address is indicated for any purchase of any Covered Product. An asterisk or  
2 other identifying method must be utilized to identify which products on the checkout page are  
3 subject to the Warning. In no event shall any internet or website Warning be contained in or  
4 made through a link.

5 The Warning shall be at least the same size as the largest of any other health or safety  
6 warnings also appearing on its website or on the label or container of HEALTH WARRIOR's  
7 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No  
8 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
9 average lay person shall accompany the Warning. Further, no statements may accompany the  
10 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
11 less harmful effect of the listed chemical.

12 HEALTH WARRIOR must display the above Warning with such conspicuousness, as  
13 compared with other words, statements or designs on the label or container, or on its website, if  
14 applicable, to render the Warning likely to be read and understood by an ordinary individual under  
15 customary conditions of purchase or use of the product.

### 16 3.3 Reformulated Covered Products

17 A Reformulated Covered Product is a Covered Product for which the "Daily Lead  
18 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality  
19 control methodology described in Section 3.4.

### 20 3.4 Testing and Quality Control Methodology

21 3.4.1 Beginning within one year of the Effective Date, HEALTH WARRIOR  
22 shall arrange for lead testing of the Covered Products at least once a year for a minimum of five  
23 consecutive years by arranging for testing of five randomly selected samples of each of the  
24 Covered Products, in the form intended for sale to the end-user, which HEALTH WARRIOR  
25 intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
26 California or "Distributing into the State of California." If tests conducted pursuant to this  
27 Section demonstrate that no Warning is required for a Covered Product during each of five

1 consecutive years, then the testing requirements of this Section will no longer be required as to  
2 that Covered Product. However, if during or after the five-year testing period, HEALTH  
3 WARRIOR changes ingredient suppliers for any of the Covered Products and/or reformulates  
4 any of the Covered Products, HEALTH WARRIOR shall test that Covered Product annually  
5 for at least four (4) consecutive years after such change is made.

6           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
7 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
8 controlling.

9           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
10 laboratory method that complies with the performance and quality control factors appropriate  
11 for the method used, including limit of detection, qualification, accuracy, and precision that  
12 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
13 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

14           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
15 independent third party laboratory certified by the California Environmental Laboratory  
16 Accreditation Program or an independent third-party laboratory that is registered with the  
17 United States Food & Drug Administration.

18           **3.4.5** Nothing in this Consent Judgment shall limit HEALTH WARRIOR’s  
19 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
20 including the raw materials used in their manufacture.

21           **3.4.6** Within thirty (30) days of ERC’s written request, HEALTH WARRIOR  
22 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. HEALTH WARRIOR shall  
23 retain all test results and documentation for a period of five years from the date of each test.

### 24           **3.5 Products in the Stream of Commerce**

25           So long as HEALTH WARRIOR can document the date of manufacture of the Covered  
26 Product, Covered Products manufactured prior to the Effective Date may be distributed or sold  
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1 without a Warning by any person or entity after the Effective Date without violating this  
2 consent judgment.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
5 attorney's fees, and costs, HEALTH WARRIOR shall make a total payment of \$55,000 ("Total  
6 Settlement Amount") to ERC within 10 days of the Effective Date ("Due Date"). HEALTH  
7 WARRIOR shall make this payment by wire transfer to ERC's account, for which ERC will  
8 give HEALTH WARRIOR the necessary account and tax information. The Total Settlement  
9 Amount shall be apportioned by ERC as follows:

10 **4.2** \$12,291.42 shall be considered a civil penalty pursuant to California Health and  
11 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$9,218.56) of the civil penalty to the  
12 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
13 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
14 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,072.86) of the civil penalty.

15 **4.3** \$4,591.39 shall be distributed to ERC as reimbursement to ERC for reasonable  
16 costs incurred in bringing this action.

17 **4.4** \$9,218.55 shall be distributed to ERC as an Additional Settlement Payment  
18 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
19 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
20 caused by Defendant in this matter. These activities are detailed below and support ERC's  
21 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
22 supplement products in California. ERC contends its activities have had, and will continue to  
23 have, a direct and primary effect within the State of California because California consumers will  
24 be benefitted by the reduction and/or elimination of exposure to lead in dietary supplements  
25 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
26 the products.

1       Based on a review of past years' actual budgets, ERC is providing the following list of  
2 activities ERC engages in to protect California consumers through Proposition 65 citizen  
3 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
4 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
5 supplement products that may contain lead and are sold to California consumers. This work  
6 includes continued monitoring and enforcement of past consent judgments and settlements to  
7 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
8 those judgments and settlements concerning lead and/or cadmium. This work also includes  
9 investigation of new companies that ERC does not obtain any recovery through settlement or  
10 judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's  
11 Voluntary Compliance Program by acquiring products from companies, developing and  
12 maintaining a case file, testing products from these companies, providing the test results and  
13 supporting documentation to the companies, and offering guidance in warning or implementing a  
14 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT  
15 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the  
16 numbers of contaminated products that reach California consumers by providing access to free  
17 testing for lead in dietary supplement products (Products submitted to the program are screened  
18 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
19 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
20 that submitted the product).

21       ERC shall be fully accountable in that it will maintain adequate records to document and  
22 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are  
23 being spent only for the proper, designated purposes described in this Consent Judgment. ERC  
24 shall provide the Attorney General, within thirty days of any request, copies of documentation  
25 demonstrating how such funds have been spent.

26       **4.5**     \$9,500 shall be distributed to the Law Office of Richard M. Franco as  
27 reimbursement of ERC's attorney's fees, while \$19,398.64 shall be distributed to ERC for its  
28



1 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
2 costs.

3       **4.6** In the event that HEALTH WARRIOR fails to remit the Total Settlement  
4 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, HEALTH  
5 WARRIOR shall be deemed to be in material breach of its obligations under this Consent  
6 Judgment. ERC shall provide written notice of the delinquency to HEALTH WARRIOR via  
7 electronic mail. If HEALTH WARRIOR fails to deliver the Total Settlement Amount within  
8 five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the  
9 statutory judgment interest rate provided in the California Code of Civil Procedure section  
10 685.010. Additionally, HEALTH WARRIOR agrees to pay ERC's reasonable attorney's fees  
11 and costs for any efforts to collect the payment due under this Consent Judgment.

## 12       **5. MODIFICATION OF CONSENT JUDGMENT**

13       **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
14 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
15 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
16 modified consent judgment.

17       **5.2** If HEALTH WARRIOR seeks to modify this Consent Judgment under Section  
18 5.1, then HEALTH WARRIOR must provide written notice to ERC of its intent ("Notice of  
19 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of  
20 Intent, then ERC must provide written notice to HEALTH WARRIOR within thirty (30) days  
21 of receiving the Notice of Intent. If ERC notifies HEALTH WARRIOR in a timely manner of  
22 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as  
23 required in this Section. The Parties shall meet in person or via telephone within thirty (30)  
24 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such  
25 meeting, if ERC disputes the proposed modification, ERC shall provide to HEALTH  
26 WARRIOR a written basis for its position. The Parties shall continue to meet and confer for an  
27 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become  
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1 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer  
2 period.

3       **5.3** In the event that HEALTH WARRIOR initiates or otherwise requests a  
4 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
5 application for a modification of the Consent Judgment, HEALTH WARRIOR shall reimburse  
6 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process  
7 and filing and arguing the motion or application.

8       **5.4** Where the meet-and-confer process does not lead to a joint motion or  
9 application in support of a modification of the Consent Judgment, then either Party may seek  
10 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
11 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
12 section 1021.5.

13       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
14       **JUDGMENT**

15       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
16 this Consent Judgment.

17       **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
18 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
19 inform HEALTH WARRIOR in a reasonably prompt manner of its test results, including  
20 information sufficient to permit HEALTH WARRIOR to identify the Covered Products at  
21 issue. HEALTH WARRIOR shall, within thirty (30) days following such notice, provide ERC  
22 with testing information, from an independent third-party laboratory meeting the requirements  
23 of Sections 3.4.3 and 3.4.4, demonstrating HEALTH WARRIOR's compliance with the  
24 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to  
25 ERC taking any further legal action.

26       **7. APPLICATION OF CONSENT JUDGMENT**

27       This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
28

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
2 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
3 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
4 application to any Covered Product which is distributed or sold exclusively outside the State of  
5 California and which is not used by California consumers.

6 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

7 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
8 on behalf of itself and in the public interest, and HEALTH WARRIOR and its respective  
9 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
10 suppliers, franchisees, licensees, customers (not including private label customers of HEALTH  
11 WARRIOR), distributors, wholesalers, retailers, and all other upstream and downstream  
12 entities in the distribution chain of any Covered Product, and the predecessors, successors, and  
13 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the  
14 public interest, hereby fully releases and discharges the Released Parties from any and all  
15 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
16 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
17 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
18 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
19 Products regarding lead and/or cadmium up to and including the Effective Date.

20 **8.2** ERC on its own behalf only, and HEALTH WARRIOR on its own behalf  
21 only, further waive and release any and all claims they may have against each other for all  
22 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
23 Proposition 65 in connection with the Notice and Complaint up through and including the  
24 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
25 right to seek to enforce the terms of this Consent Judgment.

26 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
27 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
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1 discovered. ERC on behalf of itself only, and HEALTH WARRIOR on behalf of itself only,  
2 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
3 claims up through and including the Effective Date, including all rights of action therefore.  
4 ERC and HEALTH WARRIOR acknowledge that the claims released in Sections 8.1 and 8.2  
5 above may include unknown claims, and nevertheless waive California Civil Code section

6 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR.

10 ERC on behalf of itself only, and HEALTH WARRIOR on behalf of itself only, acknowledge  
11 and understand the significance and consequences of this specific waiver of California Civil  
12 Code section 1542.

13 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
14 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
15 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

16 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
17 environmental exposures arising under Proposition 65, nor shall it apply to any of HEALTH  
18 WARRIOR's products other than the Covered Products.

19 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

20 In the event that any of the provisions of this Consent Judgment are held by a court to be  
21 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

22 **10. GOVERNING LAW**

23 The terms and conditions of this Consent Judgment shall be governed by and construed in  
24 accordance with the laws of the State of California.

25 **11. PROVISION OF NOTICE**

26 All notices required to be given to either Party to this Consent Judgment by the other shall  
27 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
28

1 email may also be sent.

2 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

3 Chris Heptinstall, Executive Director, Environmental Research Center  
4 3111 Camino Del Rio North, Suite 400  
5 San Diego, CA 92108  
6 Ph: (619) 500-3090  
7 Email: chris\_erc501c3@yahoo.com

8 With a copy to:  
9 RICHARD M. FRANCO  
10 LAW OFFICE OF RICHARD M. FRANCO  
11 6500 Estates Drive  
12 Oakland, CA 94611  
13 Ph: (510) 684-1022  
14 Email: rick@rfrancolaw.com

15 **FOR HEALTH WARRIOR, INC.**

16 Health Warrior, Inc.  
17 Shane Emmett, CEO  
18 1707 Summit Avenue  
19 Richmond, VA 23230  
20 Ph: (804) 381-5305  
21 Email: shane@healthwarrior.com

22 With a copy to:  
23 CAITLIN BLANCHE  
24 K&L GATES LLP  
25 1 Park Plaza Twelfth Floor  
26 Irvine, CA 92614  
27 Ph: (949) 253-0900  
28 Email: caitlin.blanche@klgates.com

29 **12. COURT APPROVAL**

30 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
31 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
32 Consent Judgment.

33 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
34 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
35 prior to the hearing on the motion.

1           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
2 void and have no force or effect.

3           **13. EXECUTION AND COUNTERPARTS**

4           This Consent Judgment may be executed in counterparts, which taken together shall be  
5 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
6 as the original signature.

7           **14. DRAFTING**

8           The terms of this Consent Judgment have been reviewed by the respective counsel for each  
9 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
10 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
11 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
12 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
13 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
14 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
15 equally in the preparation and drafting of this Consent Judgment.

16           **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

17           If a dispute arises with respect to either Party's compliance with the terms of this Consent  
18 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
19 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
20 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

21           **16. ENFORCEMENT**

22           ERC may, by motion or order to show cause before the Superior Court of Alameda  
23 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
24 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
25 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
26 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
27 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,

1 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
2 law for failure to comply with Proposition 65 or other laws.

3 **17. ENTIRE AGREEMENT, AUTHORIZATION**

4 **17.1** This Consent Judgment contains the sole and entire agreement and  
5 understanding of the Parties with respect to the entire subject matter herein, and any and all  
6 prior discussions, negotiations, commitments, and understandings related hereto. No  
7 representations, oral or otherwise, express or implied, other than those contained herein have  
8 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
9 herein, shall be deemed to exist or to bind any Party.

10 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
11 authorized by the Party he or she represents to stipulate to this Consent Judgment.

12 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
13 **CONSENT JUDGMENT**

14 This Consent Judgment has come before the Court upon the request of the Parties. The  
15 Parties request the Court to fully review this Consent Judgment and, being fully informed  
16 regarding the matters which are the subject of this action, to:

17 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
18 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
19 been diligently prosecuted, and that the public interest is served by such settlement; and

20 (2) Make the findings pursuant to California Health and Safety Code section  
21 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

22 ///

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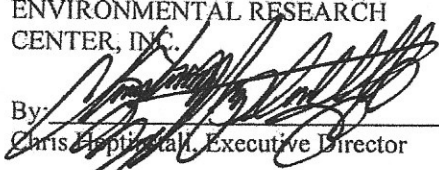
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1  
2 **IT IS SO STIPULATED:**


3 Dated: 10/23/, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

4  
5 By:   
Chris Hopfinger, Executive Director

6  
7 Dated: 10/23, 2018

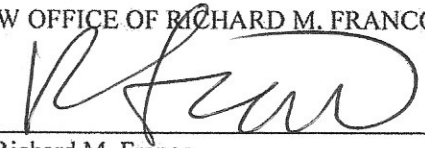
HEALTH WARRIOR, INC.

8  
9   
10 By: Shane Emmett  
11 Its: CEO

12  
13 **APPROVED AS TO FORM:**

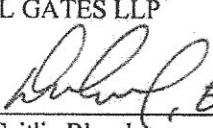
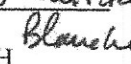
14  
15 Dated: 10/23, 2018

LAW OFFICE OF RICHARD M. FRANCO

16  
17 By:   
18 Richard M. Franco  
19 Attorney for Plaintiff Environmental  
Research Center, Inc.

20 Dated: 10/23, 2018

K&L GATES LLP

21  
22 By:  c/o Caitlin  
23 Caitlin Blanche  
24 Attorney for Defendant HEALTH  
25 WARRIOR, INC. 



**ORDER AND JUDGMENT**

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Judge of the Superior Court

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## EXHIBIT A

## **LAW OFFICE OF RICHARD M. FRANCO**

**6500 ESTATES DRIVE  
OAKLAND, CA 94611  
510.684.1022  
RICK@RFRANCOLAW.COM**

### **VIA CERTIFIED MAIL**

Current President or CEO  
Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt  
3891 South Traditions Drive  
Bryan, TX 77807

Current President or CEO  
Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt  
720 Brazos Street, Suite 1000  
Austin, TX 78701

Doss Cunningham  
(Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt's  
Registered Agent for Service of Process)  
3891 South Traditions Drive  
Bryan, TX 77807

Corporation Service Company  
(Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt's  
Registered Agent for Service of Process)  
251 Little Falls Drive  
Wilmington, DE 19808

### **VIA ELECTRONIC MAIL**

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

### **VIA ELECTRONIC MAIL**

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

**VIA ELECTRONIC MAIL**

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup>  
Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District  
Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

**VIA ELECTRONIC MAIL**

Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA FIRST CLASS MAIL**

District Attorneys of Select California  
Counties and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Woodbolt Distribution, LLC, individually and doing business as Nutrabolt**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Royal Sport LTD. Charge BCAA - SAA Strawberry Kiwi - Lead**
2. **Royal Sport LTD. Royal Sport Target Weight Loss - Lead**
3. **Cellucor Whey Cor-Performance Whey Chocolate Chip Cookie Dough - Lead**
4. **Cellucor Whey Cor-Performance Whey Cookies N' Cream - Lead**
5. **Cellucor Casein Cor-Performance Casein Chocolate - Lead**
6. **Cellucor Whey Cor-Performance Whey Molten Chocolate - Lead**
7. **Cellucor Whey Cor-Performance Whey Strawberry Milkshake - Lead**
8. **Cellucor Gainer Cor-Performance Gainer Strawberry - Lead**
9. **Cellucor Gainer Cor-Performance Gainer Chocolate – Lead, Cadmium**
10. **Cellucor Gainer Cor-Performance Gainer Vanilla - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

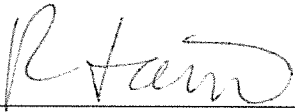
The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and cadmium has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and cadmium. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since January 23, 2015, as well as every day since the products were

introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

  
Rick Franco

Attachments

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Woodbolt Distribution, LLC, individually and doing business as Nutrabolt, and its Registered Agents for Service of Process only)  
Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Woodbolt Distribution, LLC, individually and doing business as Nutrabort**

I, Rick Franco, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 23, 2018



---

Rick Franco

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On January 23, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt  
3891 South Traditions Drive  
Bryan, TX 77807

Doss Cunningham  
(Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt's  
Registered Agent for Service of Process)  
3891 South Traditions Drive  
Bryan, TX 77807

Current President or CEO  
Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt  
720 Brazos Street, Suite 1000  
Austin, TX 78701

Corporation Service Company  
(Woodbolt Distribution, LLC, individually  
and doing business as Nutrabolt's  
Registered Agent for Service of Process)  
251 Little Falls Drive  
Wilmington, DE 19808

On January 23, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On January 23, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)



Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
January 23, 2018  
Page 7

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

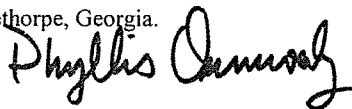
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On January 23, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents:  
**NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;**  
**CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on January 23, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 23, 2018

Page 8

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	Hanford, CA 93230 District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 303 West Third Street San Bernadino, CA 92415	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Sierra County 100 Courthouse Square, 2 <sup>nd</sup> Floor Downieville, CA 95936	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Sutter County 463 2 <sup>nd</sup> Street Yuba City, CA 95991	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Inyo County P.O. Drawer D Independence, CA 93526	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	
District Attorney, Kings County 1400 West Lacey Boulevard			

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

**The “Proposition 65 List.”** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures that will produce no observable reproductive effect at 1,000 times the level in question.*** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

***Exposures to Naturally Occurring Chemicals in Food.*** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

***Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water.*** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for

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<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.